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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Vectren Energy Delivery of Ohio, Inc. for Approval, Pursuant to Revised Code Section 4929.11, of a Tariff to Recover Conservation Expenses and Decoupling Revenues Pursuant to Automatic Adjustment Mechanisms and for Such Accounting Authority as May Be Required to Defer Such Expenses and Revenues for Future Recovery through Such Adjustment Mechanisms.	)	Case No. 05-1444-GA-UNC

VECTREN ENERGY DELIVERY OF OHIO, INC.'S REPLY BRIEF

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I. INTRODUCTION

In accordance with the schedule established by the Attorney Examiner at the March 28, 2007 hearing in this proceeding, Vectren Energy Delivery of Ohio, Inc. ("VEDO"), Ohio Partners for Affordable Energy ("OPAE"), Staff, the Office of the Ohio Consumers' Counsel ("OCC"), and the Consumers for Fair Utility Rates and the Neighborhood Environmental Coalition (also known as the "Citizens Coalition" or "CC") filed post-hearing briefs on April 23, 2007. This is VEDO's Reply Brief, which is largely devoted to addressing the briefs of OCC[1] and the Citizen's Coalition.

As a prelude, it is important to repeat the limitations on the appropriate scope of the matters remaining under consideration in this case. By Entry dated February 12,

[1] The Procedural History in OCC's April 23 Initial Brief is editorially biased and factually wrong and must be ignored. Additionally, many of the case cites in OCC's April 23 Initial Brief are wrong; VEDO has made best efforts to ascertain the cases OCC meant to cite and address those.

2007, the Attorney Examiner specified that, "[a] hearing has been scheduled on the January Stipulation, which will be considered according to the Commission's three-part test for consideration of stipulations." Entry (February 12, 2007), paragraph 15 at 9. At the discovery conference held on February 28, 2007, the Attorney Examiners limited "...the scope of all future aspects of the proceeding to new issues raised by the January 12, 2007 amended stipulation and recommendation not already contemplated or could have been contemplated in the company's application." February 28 Discovery Conference, Tr. at 72. OCC and the Citizens Coalition have devoted significant effort to matters far outside the scope designated for further consideration in this case. Moreover, the Sisyphean effort necessary to address OCC's approach to this case has required VEDO and others to roll the facts and the law uphill for Commission concurrence over and over again, only to see it all roll down for argument another day. VEDO respectfully requests expeditious resolution of this proceeding, so that it can proceed with delivery of the low-income assistance envisioned by the Commission in its September 13, 2006 Opinion and Order ("September 13 Opinion and Order").

II. REPLY TO CITIZENS COALITION'S INITIAL BRIEF

Before responding (again) to the error-ridden arguments and claims of OCC, VEDO will take up the considerable challenge presented by the latest pleading submitted by the Citizens Coalition. The challenge is considerable not because of the merit of the claims made by CC, but because of the difficulty in determining what CC's real position and interest might be in this proceeding.

CC sought intervention in this proceeding on March 3, 2006 making no claim that it represented any customers directly served by VEDO.[2] In its intervention request, CC stated:

- "Citizens Coalition represents a diverse group of citizens concerned with escalating natural gas prices on low-income customers. Citizens Coalition seeks to protect the interests of those consumers in an economic environment that is becoming ever-increasingly hostile."[3]
- "Citizens Coalition may clearly be adversely affected if the Commission fails to adequately review VEDO's application."[4]
- "VEDO's application represents a unique approach to controlling costs associated with heating with natural gas. The Commission's review of the Application and subsequent decision will have a significant impact on low-income consumers in Ohio."[5]

CC's intervention request was not opposed[6] and was granted. CC did not participate in the hearings held in this case and has not sought rehearing on any entry or order issued by the Commission.

On May 8, 2006, CC filed its Initial Brief stating, among other things, that while CC did not oppose the Stipulation and Recommendation filed with the Commission on April 10, 2006, it nonetheless had comments, questions and concerns. CC stated that VEDO "...deserves much praise for its progressive set of proposals to try to help hard-pressed *natural gas customers* which include low income families" and observed that

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[2] CC indicated that it was concerned about the potential precedent of a Commission decision in this proceeding. CC's March 3, 2006 Memorandum in Support at page 3.

[3] CC's March 3, 2006 Memorandum in Support at pages 2-3.

[4] CC's March 3, 2006 Memorandum in Support at page 3.

[5] CC's March 3, 2006 Memorandum in Support at page 5.

[6] For its part, VEDO did not oppose CC's intervention because VEDO judged the issues presented by its application to be issues of policy.

VEDO's "...proposal is a major step forward.[7] In its May 8, 2006 pleading, CC advised the Commission that "[i]t is also critical, the Coalition emphasizes, that groups just below the poverty line be considered since they are often the hardest hit in fact by an accelerated spiral of reduced consumption leading to rising rates, including the transportation of gas."[8] CC's Initial Brief also suggested a number of changes to the Stipulation and urged the Commission to not let language in Paragraph 13 of the Stipulation become "...some kind of veto power against making beneficial changes in the Stipulation, including those presented by the Citizens' Coalition."[9]

Following the Commission's September 13, 2006 decision and OCC's October 13, 2006 Application for Rehearing, CC filed comments on October 31, 2006. CC's October 31, 2006 comments indicated that CC was "sad" and "disappointed" because "[n]ot only has the PUCO missed out on a momentous opportunity, but also the Commission has undermined the stipulation process."[10] Even though it did not seek rehearing, CC moved the goal line it previously drew by claiming that the Commission should adopt the April 10, 2006 Stipulation. It went on to say that: "[i]f the Commission chooses not to do this, then our clients request that all the parties should immediately proceed ahead with the 'Half Stipulation' approved by the Commission (please notice

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[7] CC's May 8, 2006 Initial Brief at 2-3.

[8] CC's May 8, 2006 Initial Brief at 8-9.

[9] CC's May 8, 2006 Initial Brief at 16. In the November 8, 2006 Entry on Rehearing at 4, the Commission recognized some inconsistencies in the positions taken by the "otherwise well meaning" CC regarding the need for the Commission to preserve its ability to make beneficial changes to the April 10, 2006 Stipulation and Recommendation.

[10] CC's October 31, 2006 Comments at page 2. At page 3 of the Comments, CC said: "Our clients – who mainly represent low-income families – certainly cannot fault the PUCO for approving conservation programs which help the poor."

that the winter is just a few weeks away) while the Commission holds an evidentiary hearing...."[11]

On April 23, 2007, CC filed its second Initial Brief indicating that the Commission had previously "butchered" the April 10, 2006 Stipulation by replacing it with a program aimed at low income customers (which CC refers to as the "Half Stipulation"). CC next notes that its advocacy should not be misunderstood because it wants the low income programs. CC then blames the Commission for depriving low income customers of the benefit of any programs during last winter and launches itself in a new direction by challenging the authority of the Commission (which CC calls the "Pseudo Commission") to do anything for anybody.[12]

While CC may be well meaning, its occasional pleadings present inconsistent claims, positions[13] and arguments that make the reply brief opportunity an organizational and intellectual challenge. We simply do not know where to begin.

So rather than attempt to figure out what CC's real position and interest was, is or will be in the next pleading, VEDO replies to CC's April 23, 2007 Initial Brief by saying that it agrees with one of the positions CC has presented for the Commission's consideration. More specifically, VEDO agrees that the Commission should confirm the rulings it made in the September 13 Opinion and Order by adopting the January 12, 2007 Stipulation ***so that*** the parties can immediately proceed with conservation

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[11] CC's October 31, 2006 Comments at page 6.

[12] CC's April 23, 2007 Initial Brief at pages 2-3.

[13] For example, in CC's May 8, 2006 Initial Brief (at page 3) it said that: OCC and "...the Ohio Partners for Affordable Energy deserve praise for their roles in this proceeding. Both are striving to help *all* residential customers." In its April 23, 2007 Initial Brief, CC states (at page 6) that "OPAE does not represent natural gas consumers...."

programs that will directly benefit 60% of VEDO's residential customers and indirectly benefit VEDO's other customers.

CC previously asked the Commission to not let language in the April 10, 2006 Stipulation deter the Commission from making beneficial changes. The Commission accepted CC's invitation and resolved the contested issues in a way that required modifications to the April 10, 2006 Stipulation – modifications which the Commission determined to be beneficial.[14] CC did not seek rehearing in response to the Commission's September 13 Opinion and Order and the January Stipulation presently before the Commission presents no new issue of fact or law. In addition to the practical difficulties presented by the inconsistent claims and positions in CC's April 23, 2007 Initial Brief, CC has no standing to contest the results of the Commission's September 13 Opinion and Order.

III. REPLY TO OCC'S INITIAL BRIEF

A. OCC's challenge to the Commission's consideration of VEDO's application is untimely and outside the scope of the issues currently before the Commission.

In its post-hearing brief, OCC has repeated its previously rejected challenge to the Commission's February 7, 2006 determination to evaluate VEDO's application as an alternative regulation application, the consideration of which would be controlled by Section 4929.05, Revised Code. Beginning with its October 13, 2006, Application for Rehearing from the September 13 Opinion and Order and multiple times since, OCC has challenged the Commission's choice of Section 4929.05, Revised Code, for consideration VEDO's Conservation Application. In its Application for Rehearing dated

[14] November 8, 2006 Entry on Rehearing at 4.

February 9, 2007, ("Second Application for Rehearing"), OCC criticizes the Commission for permitting VEDO "to avail itself of (and subject its customers to) alternative regulation," and in its Initial Brief dated April 23, 2007 ("OCC April 23 Brief"), OCC characterizes VEDO's application as "Vectren's request for an alternative rate plan." Second Application for Rehearing at 10-12; OCC April 23 Initial Brief at 8. As OCC well knows, VEDO did not choose Section 4929.05, Revised Code, as the basis for its Conservation Application in this proceeding. On February 7, 2006, the Attorney Examiner issued an Entry finding that the Conservation Application be "considered a request for an alternate rate plan as described in Section 4929.01(A), Revised Code and thus ... controlled by Section 4929.05, Revised Code." Conservation Application, Entry at 2 (February 7, 2006). As the record reflects, OCC raised no objection to this determination until it filed its October 13, 2006, Application for Rehearing from the Commission's September 13 Opinion and Order. In fact, and on advice of counsel, OCC's witness made positive mention of a section of the alternative regulation Chapter of the Ohio Revised Code for purposes of advancing OCC's position in favor of moving forward with conservation programs. Testimony of Wilson Gonzalez, OCC Ex.1 at 20, 27. In its November 8 Rehearing Entry the Commission found that, since there were no appeals of the attorney examiner's entry, Section 4929.05, Revised Code, provided the appropriate standard of review. November 8 Rehearing Entry at 2. Subsequently, OCC has continued to raise this issue in multiple filings. In a January 10, 2007 Entry following OCC' s December 8, 2006 Notice and Withdrawal ("Notice of Withdrawal"), the Examiner stated unequivocally:

> In its application for review and interlocutory appeal, OCC argues that the December 29 Entry contains an error in

> ruling that Section 4929.05, Revised Code, is the statutory authority for going forward with the hearing. The attorney examiner finds that this issue is not timely. By entry dated February 7, 2006, the attorney examiner ruled that VEDO's application was subject to the provisions of Section 4929.05, Revised Code. An interlocutory appeal regarding that ruling should have been filed within five days of the February 7, 2006, entry. The fact that OCC has withdrawn from the April Stipulation does not provide OCC with a new opportunity to raise this issue.

January 10, 2007 Attorney Examiner Entry at 5-6.

Furthermore, by Entry dated February 12, 2007, the Attorney Examiner specified that, "[a] hearing has been scheduled on the January Stipulation, which will be considered according to the Commission's three-part test for consideration of stipulations." Entry (February 12, 2007), paragraph 15 at 9. At the discovery conference held on February 28, 2007, the Attorney Examiners limited "...the scope of all future aspects of the proceeding to new issues raised by the January 12, 2007 amended stipulation and recommendation not already contemplated or could have been contemplated in the company's application." February 28 Discovery Conference, Tr. at 72. OCC's latest challenge to the Commission's consideration of the issues presented in this proceeding pursuant to Section 4929.05, Revised Code, is not a new issue and is clearly outside the scope of the review defined by these findings.

OCC's claims associated with the Commission's choice of Section 4929.05, Revised Code, including all those related to procedural filing and notice requirements, the waiver of which OCC accepted, have been made, considered, and rejected multiple times in this proceeding and must be rejected again.

OCC's relatively new claim that Sections 4909.15 and 4929.05, Revised Code, are mutually exclusive has no basis in law.[15] Once again, OCC has cited a telephone case based on statutes not applicable to VEDO's application.[16] In fact, in this case, VEDO has not proposed to establish rates by a method different from that in Section 4909.15, Revised Code, but has assumed that method as applied in Case No. 04-571-GA-AIR. VEDO has proposed a mechanism designed to promote efficiency and better assign fixed costs to the cost causer. Section 4929.01(A) speaks to the use of a method different to that prescribed in Section 4909.15, Revised Code, for establishing rates, but also provides that an alternative rate plan may include other provisions that promote rate stability, that tend to assess costs to the entity which causes the incurrence of the cost, or promote and reward efficiency. The result of the plan approved by the Commission on September 13, 2006 does not effect the revenue requirement found by the Commission to be reasonable, pursuant to Section 4909.15, Revised Code. Finally, OCC's accusation that the January Stipulation (and, by implication, the September 13 Opinion and Order) provides a windfall to VEDO is tantamount to arguing that VEDO should be denied an opportunity to collect the revenue requirement approved by the Commission.

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[15] OCC made this argument, absent any claim of *authority, for the first time* in its second Application for Rehearing filed on February 9, 2007.

[16] The authority cited in its April 23 Initial Brief by OCC, Section 4927.03, Revised Code, applicable in the Cincinnati Bell Telephone Case, is largely analogous to Section 4929.04, Revised Code, which is applicable only in circumstances in which natural gas companies seek alternative regulation for commodity or ancillary services. OCC April 23 Initial Brief at 20. VEDO's application seeks neither. Also, in spite of OCC's claim that no ceiling is imposed on VEDO's rates, as addressed above, the January Stipulation provides for the opportunity for collection of revenues limited to the revenue requirement approved by the Commission in VEDO's last rate case, adjusted for weather and customer additions.

The important question currently before the Commission is whether there exists any authority for the Commission's consideration and approval of the January 12 Stipulation. VEDO has previously supported the Commission's decision to consider its Conservation Application, the April 10 Stipulation, and the January 12 Stipulation pursuant to Section 4929.05, Revised Code, consistent with the record incorporated from VEDO's most recent rate case, as being appropriate and lawful. VEDO has also demonstrated that authority to approve the Sales Reconciliation Rider ("SRR") is supported not only by Section 4929.11, Revised Code (as filed by VEDO and supported by OCC[17]), but also by Section 4909.18, Revised Code, pursuant to which it can be considered either as the Section 4908.18 application **not** for an increase in rates contemplated by Section 4929.05, Revised Code, or as a stand-alone application **not** for an increase in rates.[18] Either way, the Conservation Application, which contemplated a first filing for a new service and the SRR, which is **not** an increase in rates, could have been approved without hearing. Finally, the Commission could have exercised its authority in Sections 4906.26 and 4905.37, Revised Code, to consider and remedy the adequacy of the utility's opportunity to realize its revenue requirements.

[17] OCC supports the Commission's authority to consider the Conservation Application pursuant to Section 4929.11, Revised Code. In its October 13, 2006, Application for Rehearing, OCC represented that it was "within the confines of R.C. 4929.11 that OCC agreed to implement..." the SRR. OCC October 13 Application for Rehearing at 7.

[18] VEDO's Conservation Application requested approval of two riders, one of which was a first filing for a new service, and the second of which was the SRR, which is **not** for an increase in rates. The September 13 Opinion and Order, memorialized in the January Stipulation, includes only the SRR. Both the Conservation Application and the January Stipulation currently before the Commission can be considered as Section 4909.18, Revised Code, applications. Because neither of these documents seeks an increase in rates, the statutory requirements, the pre-filing notice, newspaper notice, and investigation requirements of Sections 4909.19 and 4909.43, Revised Code, do not apply.

B. The Commission's consideration of VEDO's Conservation Application meets and exceeds the statutory procedural requirements of Section 4929.05, Revised Code.

OCC claims again that various procedural requirements associated with applications for alternative regulation have not been met. This claim, like virtually all of OCC's arguments, has been made repeatedly, beginning with OCC's first Application for Rehearing filed on October 13, 2006 and in its several subsequent applications for rehearing and request for interlocutory appeals. Even though this issue is outside of the scope of this proceeding, VEDO will dispel this contention briefly below.

Although not explicitly required in instances in which the Commission transforms a utility application made pursuant to other authority into an application for an alternate regulation plan under Section 4929.05, Revised Code, all statutory requirements associated with utility applications for alternate regulation plans have been met in this proceeding. The January Stipulation, the terms and conditions of which contain the same results dictated by the Commission in its September 13 Opinion and Order, provides for no increase in rates.[19] By the terms of the applicable statutes, an application for an alternative regulation plan made as a part of Section 4909.18, Revised Code, application **not** for an increase in rates, could be considered and approved by the Commission without notice, investigation or hearing. OCC's claim that the Ohio Supreme Court has already addressed this issue in *Time Warner v. Pub. Util. Comm.*, 75 Ohio St. 3d 229 (1996) is incorrect. The version of Section 4927.04(A),

[19] The Sales Reconciliation Rider ("SRR") simply provides VEDO with the opportunity to collect the base rate revenue requirement approved by the Commission in VEDO's last rate case and the stipulation, as a whole, "does not constitute an increase in rates." Joint Ex. 2 at 8 and 10. In fact, Staff witness Puican testified that had revenues from a hypothetical SRR been included since the last rate case, VEDO's return would, nevertheless, been well below the return authorized in the last rate case. March 28 Hearing, Tr. at 234.

Revised Code, applicable to telephone alternative regulation which was in place at the time the Ohio Supreme Court issued its decision in *Time Warner*, specifically conditioned the Commission's authority to adopt a plan of alternative regulation to broadly establish rates and charges for local basic exchange service so that such authority was only available **when a telephone utility sought a rate increase**. *Id.* at 241; emphasis added.[20] Section 4929.05, Revised Code, applicable to natural gas alternative regulation, states that a natural gas company may apply for an alternate regulation plan in the context of an application to increase rates or otherwise, and, as discussed above, is silent with respect to instances in which the Commission reclassifies an application as an alternate rate plan. It is also important to repeat that this proceeding did not involve either a request for or grant of authority to disturb the revenue requirement which the Commission authorized in Case No. 04-571-GA-AIR (VEDO's most recent rate case). As agreed to by OCC, all that was sought and all the Commission approved was a rate design mechanism "to provide VEDO with a fair, just, and reasonable opportunity to collect the base rate revenue established by the Commission for the Residential and General Service customer classes in VEDO's recent rate case (Case No. 04-571-GA-AIR)." Joint Ex. 1 at 7.

Even though no statutory requirements are attached to applications reclassified by the Commission to alternative regulation applications, and, contrary to OCC's argument of deficiency of process, all of the following things have occurred in this proceeding:

[20] VEDO's counsel is quite familiar with the Time Warner case. The Commission will recall that the General Assembly promptly reacted to the Court's decision by removing the requirement from the telephone alternative regulation statutes that the Ohio Supreme Court relied upon to overturn the Commission's adoption of a plan of alternative regulation.

1. With OCC's concurrence, the SFRs from Case No 04-571-GA-AIR were incorporated into this record, and the remaining filing and notice requirements of Rule 4901:1-19-05 and 4901:1-10-03(B) were waived, pursuant to entries dated March 16, 2006 and April 5, 2006, respectively.

2. A procedural schedule was established by Entry dated February 27, 2006, affording all parties the opportunity to file testimony addressing VEDO's Conservation Application. OCC and Staff[21] filed testimony in response to VEDO's Conservation Application on March 20, 2006.

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[21] The Prefiled Testimony of Staff informed the parties of the Staff's position following its review and consideration of VEDO's Conservation Application. Prefiled Testimony of Stephen E. Puican (March 20, 2006) This testimony, along with the Surrebuttal Testimony filed by Staff on April 21, 2006, established substantial compliance with any requirement for a Staff report pursuant to Rule 4901:1-19-07, O.A.C. This rule provides for a report by Staff which addresses, at a minimum, the reasonableness of current rates pursuant to Section 4909.15, Revised Code, for application filed pursuant to Section 4929.05, Revised Code. In his testimony, Mr. Puican discusses aspects of VEDO's recent rate case (Case No. 04-571-GA-AIR) and acknowledges that the decoupling mechanism (SRR) proposed in the Conservation Application was designed to provide VEDO with a better opportunity to collect the return authorized in that rate case, an acknowledgement implicit in which is the reasonableness of the current rates authorized only a few months prior to the application in this case. In his testimony, Mr. Puican reported that Staff did not necessarily oppose a decoupling mechanism that is designed to recognize the effect of declining use per customer on the authorized return. OCC, was fully informed of the Staff's position on the issues presented in this proceeding (including the assumption of the reasonableness of the rates established in Case No. 04-571-GA-AIR) and had and exercised the right to file objections to the Conservation Application by filing testimony of March 29, 2006. Therefore, OCC cannot claim prejudice for lack of a separate writing entitled "report."

Parenthetically, it must be noted that Section 4929.01(A) speaks to the use of a method different to that prescribed in Section 4909.15, Revised Code, for establishing rates and provides that an alternative rate plan may include other provisions that promote rate stability, that tend to assess costs to the entity which causes the incurrence of the cost, that promote and reward efficiency. Alternative rate plan may also include automatic adjustments based on a specified index or changes in specific costs. In its Conservation Application, VEDO has not proposed to establish rates by a method different from that in Section 4909.15, Revised Code, but has assumed that method as applied in Case No. 04-571-GA-AIR. VEDO has proposed a mechanism designed to promote efficiency and better assign fixed costs to the cost causer. Because there is no proposal to establish rates different from the method Section 4909.15, Revised Code, it makes no sense to require a report from Staff specifically on the reasonableness of VEDO's current rates (which are presumptively reasonable, in any event.

3. Following the filing of the April 10 Stipulation, to which OCC was a signatory party, OCC was permitted to file additional testimony, which it did on April 19, 2006.

4. On April 21, 2006, the Staff filed Surrebuttal Testimony opposing the April 10 Stipulation.

5. A hearing was held on April 24, 2006, at which all parties, including Staff, waived cross-examination of all witnesses and agreed to the admission of all of the pre-filed testimony as record evidence. The record was then closed, and submitted for Commission decision based on the evidence of record.

6. The Commission issued its Opinion and Order on September 13, 2006, in which it approved an alternative regulation plan it found to be supported by the evidence presented to it in the record. . Also, in the September 13 Opinion and Order, in response to a specific challenge by Staff, the Commission has already found that VEDO met the burden of proof, under Section 4929.05, Revised Code, for an alternative regulation plan that is in compliance with the requirements of Sections 4905.25 and 4929.02, Revised Code. Following OCC's October 13, 3006 Application for Rehearing, the Commission confirmed its September 13 Opinion and Order in its November 8 Rehearing Entry in which it found that its "...conclusions are supported by the evidence of record and are not a mistake." November 8 Rehearing Entry at 3-4.

7. In accordance with the provisions of Section 4929.07, Revised Code, VEDO made multiple notifications to the Commission of its intention to implement the alternative regulation plan approved by the Commission. On September 14, VEDO made a Form 8-K Filing with the Securities and Exchange Commission indicating this intent. On September 28, 2006, fifteen days after the September 13 Opinion and Order, VEDO filed Tariff Sheet No. 43 approved therein along with a cover letter indicating its intent to implement the order as approved. On October 23, 2006, VEDO filed a Response to OCC's Application for Rehearing in which it again asserted its intent to implement the Commission's order. Finally, when OCC filed its Notice of Termination from the April 10 Stipulation, VEDO, along with OPAE and Staff, submitted two additional stipulations notifying the Commission of its intent to proceed with the plan approved by the Commission in its September 13 Opinion and Order.

8. On February 5, 2007, the Staff filed a motion to incorporate the Staff Report and revised Schedule A-1 from VEDO's last rate case, which was granted by the Examiner on March 28, 2007. March 28 Hearing, Tr. at 6.

All statutory process requirements resulting from the Commission's decision to transform VEDO's application into an alternative regulation plan application have been satisfied except that required by Section 4929.07, Revised Code[22], and OCC has had

[22] Section 4929.07, Revised Code, prescribes the responses the Commission has available to it in the event that notice of the utility's acceptance of the Commission's order of an alternative regulation plan is given and a tariff has been filed in compliance thereof. OCC apparently has no objection to the fact that the requirements of Section 4929.27, Revised Code have not been met.

the opportunity to make its case with respect to the original Conservation Application, the April 10 Stipulation, the September 13 Opinion and Order, and the January 12 Stipulation in this case.

In sum, there are no specific statutory requirements attached to applications transformed by the Commission into alternative regulation applications. Even so, the statutory requirements (with the sole exception of Section 4929.07, Revised Code) associated with applications initiated by natural gas companies for alternative regulations plans were all met in this proceeding.

C. Pursuant to Section 4905.13, Revised Code, the Commission may authorize accounting treatment for the deferral of costs associated with the SRR.

Again, for at least the fourth time since its first Application for Rehearing filed on October 13, 2006 from the September 13 Opinion and Order in which the Commission declined to accept the April 10 Stipulation supported by OCC, OCC challenges the SRR generally, and the associated deferred accounting authority for the difference between actual and approved base rate revenues (adjusted for weather and customer additions), specifically. The Commission denied OCC's October 13 Application for Rehearing and subsequently found twice that it had authority pursuant to Section 4905.13, Revised Code, to approve the accounting authority. Entry dated January 10, 2007 at 3 and Entry on Rehearing dated February 28, 2007 ("February 28 Rehearing Entry") at 7-8. Contrary to OCC's specious arguments, the Commission, by authorizing the accounting at issue, has neither facilitated an unauthorized rate increase nor circumvented the ratemaking provisions of Section 4909.15 or 4909.18, Revised Code. Additionally, once again, OCC (mis)characterizes the results of the authority granted as "a guarantee of

collecting revenues authorized in prior rate case" and as ". . .making Vectren "whole" – compensating dollar for dollar for reduced revenues associated with declining customer usage...." OCC April 23 Initial Brief at 22.

As the Commission pointed out previously, OCC, having asserted that the accounting ". . .is in reality a mere tracking mechanism," now asserts a rate effect not yet approved by the Commission. February 28 Rehearing Entry at 8. Further, absent direct evidence to the contrary, OCC ignores the expert testimony of Staff witness Puican that had a hypothetical SRR been in effect since the last rate case, VEDO's performance would have been significantly below the return authorized by the Commission in that case. March 28 Hearing, Tr. at 234. Even if VEDO were able to amortize the deferred amounts without additional Commission authority, this is hardly the dollar-for-dollar consequence OCC claims.

As the Commission has twice explicitly found, it has authority pursuant to Section 4905.13, Revised Code, to authorize the accounting deferrals related to the weather-customer addition adjusted differences between actual base revenues and approved base rate revenues associated with the SRR.

D. The Commission has authority to approve the SRR as a stand-alone rate design mechanism.

Consistent with OCC's "kitchen sink" approach to this case, it mounts an argument against approval of a stand-alone SRR, even though a stand-alone SRR is not a feature of the January Stipulation which the Examiner ruled is the subject of this case. The issue of the SRR is not a new issue, either, and is, therefore, outside the scope of this proceeding.

Nevertheless, because OCC's discussion mischaracterizes both the nature of the SRR and the applicable law, a brief response is necessary. In spite of OCC's support of the SRR in the April 10 Stipulation when it was paired with a $3.6 million contribution from customers for conservation, OCC has repeatedly argued against it since the Commission paired it with a $2 million dollar contribution from VEDO for conservation. In the April 10 Stipulation, OCC supported the SRR as a mechanism which merely provides VEDO an opportunity to collect the revenue requirement already approved by the Commission. Beginning with its Application for Rehearing from the September 13 Opinion and Order, OCC has repeatedly argued that it is a rate increase and is not permitted by law. In its April 23 Initial Brief, OCC exaggerates its previous hyperbole by asserting that VEDO requests "more than a fair and reasonable rate of return under the statute" and seeks "regulatory assurance to recover nearly 100% of the residential and general service sales revenues approved by the Commission in the last rate case." OCC April 23 Initial Brief at 27. These representations, likely to be repeated in a press release certain to confuse VEDO's customers, border on irresponsible.

As indicated above, OCC's arguments are a mischaracterization of the SRR mechanism endorsed by the signatories to the January Stipulation (and supported by OCC in the April 10 Stipulation and approved by the Commission in its September 13 Opinion and Order). The January Stipulation clearly indicates that the SRR simply provides "VEDO with a fair, just, and reasonable opportunity to collect the base rate revenue requirement established by the Commission for the Residential and General Service customer classes in VEDO's recent base rate case (Case No. 04-571-GA-AIR)" and "does not constitute an increase in rates." January Stipulation at 8 and 10. The

actual SRR mechanism permits VEDO to recover only "the difference between VEDO's weather-normalized actual base revenues and the base revenues approved in VEDO's most recent rate case, as adjusted for customer additions." *Id.* In the event of usage levels below that anticipated in the last rate case, charges made to customers are only in the amount necessary to permit VEDO to recover the fixed costs found reasonable by the Commission in its last rate case. Company Ex. 2 at 13. Conversely, if customer usage increases above that anticipated in the last rate case, the SRR would reduce actual bills to customers. *Id.* at 14. Contrary to OCC's claim that the SRR somehow provides a rate increase to benefit VEDO, the fact is that the SRR simply affords VEDO a reasonable opportunity to collect the revenue requirement authorized in its recent rate case in accordance with a fundamental objective of regulation.

Section 4909.18, Revised Code, says that, if the Commission determines that an application is "not for an increase in rates, the commission may permit the filing of the schedule proposed in the application and fix the time when such schedule shall take effect." In its Order herein, the Commission has acknowledged the parties' (including OCC) representation that the purpose of the SRR is "to provide VEDO with a fair, just and reasonable opportunity to collect the base rate revenue requirement established by the Commission for the residential and general service customer classes in VEDO's recent base rate case (Case No. 04-571-GA-AIR)." September 13 Opinion and Order at 6. The evidence of record in this case, as well as the agreement of the parties memorialized in the April 10 and January Stipulations, all demonstrate clearly that the SRR mechanism, on a stand-alone basis, is not an increase in rates (and, in conjunction with a $2 million VEDO contribution to conservation programs, results,

practically speaking, in a reduction in the revenue that will be available to cover the fixed costs found to be reasonable in VEDO's most recent rate case). The Commission has authority, pursuant to the statutory requirements of Section 4909.18, Revised Code, applicable to requests **not** for an increase in rates, to approve the SRR contained in the January Stipulation as approved in the September 13 Opinion and Order.[23]

Contrary to OCC's repeated misrepresentations, the SRR does **not** guarantee dollar-for-dollar recovery of the sales revenue authorized in VEDO's last case, does not provide more than a fair and reasonable rate of return, and does not assure recovery of virtually 100% of the revenue requirement approved in the last rate case.

OCC's attempts to link the test year concept with rate design is especially tortured. While the Commission's determination of a reasonable revenue requirement for a utility is fairly explicitly dictated by Section 4909.15, Revised Code, there are no explicit statutory prescriptions for designing rates and charges to provide a utility with a reasonable opportunity to recover its authorized revenue requirement. Section 4909.15(A)(4), Revised Code, provides that the Commission, "when fixing and determining just and reasonable rates, fares, tolls, rentals, and charges, shall determine: . . . [t]he cost to the utility of rendering the public utility service for the test period less the total of any interest on cash or credit refunds paid, pursuant to section 4909.42 of the Revised Code, by the utility during the test period." Section 4909.15(C), Revised Code, provides that "[t]he revenues and expenses of the utility shall be determined during the test period." Application of the test period concept, then, is

[23] Alternatively, Section 4929.11, Revised Code, provides the Commission with wide latitude to establish fluctuating rate design mechanisms or devices for the purpose of permitting a natural gas utility to recover its costs.

specifically limited to the determination of the revenues and expenses used to establish the cost of providing the utility service.[24] There is no statutory prescription for the methodology to be employed by the Commission in designing the rates and charges, the purpose of which is to permit the utility an opportunity to recover that cost.

OCC claims that Staff witness Puican is suggesting that the Commission has the power to disregard the test year concept by the approval of various riders. OCC April 23 Initial Brief at 23. More accurately, the Staff's position is simply an acknowledgement that, once the Commission applies test year data to determine the cost of providing the utility service, it is not shackled to test year data when it sets about designing rates to recover that cost. If that were not clear from the specificity of the test year language of Section 4909.15(A)(4) and (C), Revised Code, Section 4929.11, Revised Code, provides the Commission broad authority to do so.

E. The Commission has already found that the terms and conditions of the January Stipulation meet its three-part test for consideration of stipulations.

Finally, OCC attacks the matter of the applicability of the Commission's three-part test for the consideration of the January Stipulation. At the risk of being repetitive, the January Stipulation embodies the results of the Commission's September 13 Opinion and Order, in which the Commission fashioned an alternative regulation plan

[24] Once again, the Ohio Supreme Court case OCC cites in support of its argument here is completely irrelevant to this issue. The Court declined to permit recovery of the costs of cancelled (not failed) nuclear plant construction costs as a cost of providing the utility service saying," [t]he extraordinary loss sustained by CEI in connection with the terminated nuclear plants cannot be transformed into an ordinary operating expense pursuant to R.C. 4909.15(A)(4) by commission fiat." *Consumers' Counsel v. Pub. Util. Comm.*, 67 Ohio St.2d 153, 164 (1981). There is no evidence in this case that the SRR purports to provide an opportunity to recover anything other than the test year cost of providing natural gas service as determined in VEDO's last rate case.

based on its consideration of the record in this case, specifically so that the result would meet the three-part test. It follows then, that the January Stipulation meets the three-part test. Because OCC suggests that the lack of support by a customer class alone is sufficient basis to reject a stipulation, it must be noted that this three-part test was endorsed by the Ohio Supreme Court in a case in which OCC challenged a stipulation to which it had not been a party. *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 592 N.E.2d 1370, 1373, 64 Ohio St.3d 123, 126 (1992).

Nevertheless, OCC's discussion contains misrepresentations which must be addressed.

F. The January Stipulation was the product of serious bargaining among capable, knowledgeable parties.

OCC asserts that this criterion was not met because the January Stipulation accepts the September 13 Opinion and Order. In support of its position, OCC, after speculatively assigning motives to the signatories, concludes that there was no bargaining and inconsistently complains that OCC was not included in the negotiations (which it had only just claimed had not occurred). OCC April 23 Initial Brief at 28-29. The uncontroverted evidence in this case demonstrates that the parties had engaged in serious, lengthy negotiations beginning prior to the filing of the application in this case and throughout the period following the September 13 Opinion and Order culminating in the January Stipulation. March 28 Hearing, Tr. 23. OCC was invited to participate in the preparation of the January Stipulation and declined. Company Ex. 2c at 4. The Ohio Supreme Court cases OCC cites in support of its argument are mischaracterized; the Court never ruled that stipulations approved by the Commission must be supported

by all customer classes.[25] OCC April 23 Initial Brief at 30. In fact, there is no requirement that a representative of any specific customer class (or a subset of any customer class, for that matter) support (or decline to oppose) a stipulation in order for this part of the test to be met. Establishing such a requirement would empower any individual intervenor to a Commission proceeding who is the sole representative of a customer class to hold an otherwise reasonable stipulation hostage to its demands. This cannot be the result intended by the Commission when it established this criterion as a part of its standard for evaluating the reasonableness of partial stipulations. In fact, the three-part test is specifically designed to provide a standard for assessing the reasonableness of stipulations which are not supported by all parties to a proceeding.[26] As the evidence of record reflects, the January Stipulation meets this criterion.

G. The January Stipulation benefits ratepayers and the public interest and does not violate any important regulatory practice or principle.

OCC's position that the January Stipulation does not benefit ratepayers and the public interest is based on its belief that the majority of the benefits accrue to VEDO, and the majority of costs to customers. Again, OCC ignores the fact that the SRR only

[25] Here, as with elsewhere, the Supreme Court authority cited by OCC in support of its position is both mischaracterized and not relevant. OCC completely misrepresents the Court's decision in *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 109 Ohio St.3d 328(2006). The Court did not overturn the Commission because of lack of customer support, as OCC states; rather, the Court overturned the Commission's order because it violated the requirement of Section 4928.14(B), Revised Code, which states that the Commission may dispense with a competitive-bidding process "if other means to accomplish generally the same option for customers is readily available in the market and a reasonable means for customer participation is developed." The Court's decision was unrelated to customer support or lack thereof for the stipulation in the case, but was rather based on its determination that the rate stabilization plan adopted by the Commission failed to provide for customer participation as required by Section 4928.14(B), Revised Code. *Id.* at 334-335. Also, the Court did not pronounce that OPAE does not represent rate-paying customers in this case as OCC claims; it merely observed in a footnote that OPAE operated a weatherization program. *Id.* at 335.

[26] *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 592 N.E.2d 1370, 1373, 64 Ohio St.3d 123, 126 (1992).

permits VEDO the opportunity to collect already approved revenue levels based on average use per customer, and does not protect VEDO against the risk associated with weather and changes in customer counts. March 28 Hearing, Tr. at 78. VEDO's customers, therefore, are subject only to the level of cost approved by the Commission in VEDO's last rate case. OCC persists in describing the SRR in terms of "dollar-for-dollar" recovery, a practical "guarantee of recovery of revenues authorized in the last rate case, and making the company whole." OCC April 23 Initial Brief at 31, 33. As previously discussed, these descriptions are wrong, and OCC knows it.

Regardless of OCC's opinion of the SRR (which it supported in the April 10 Stipulation and now opposes), the fact is that there is a $4.7 million swing in favor of customers resulting from the Commission's rejection of the April 10 Stipulation in favor of its September 13 Opinion and Order (and January Stipulation).[27] This is the only economic difference between the two stipulations. However, in yet another internal inconsistency, OCC witness Chernik advocates the approval of the April 10 Stipulation, and OCC asserts that its witness Kushler concludes that the January Stipulation, which is economically more favorable to customers, does not benefit ratepayers and is not in the public interest. OCC Ex. E at 7; OCC April 23 Initial Brief at 33.[28] OCC's discussion of the third criteria is largely repetitive of its version of the test year concept and the statutory requirements associated with applications for alternative regulation, which have been addressed previously and above.

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[27] Additionally, OCC witness Kushler admitted that the economic value to VEDO under the January Stipulation is less than under the April 10 Stipulation. March 28 Hearing, Tr. at 155.

[28] Neither OCC witness Chernik nor OCC witness Kushler had an opinion about whether the January Stipulation violates any regulatory principle or practice. March 28 Hearing, Tr. at 129, 160.

As VEDO indicated in its Post-hearing Brief, the best evidence that the January Stipulation benefits ratepayers, is in the public interest, and violates no regulatory principle or practice is the Commission's September 13 Opinion and Order, in which the Commission dictated modifications that, *inter alia*, provided for the two-year, $2 million low-income conservation program and a requirement for Commission review after two years as a prerequisite to the continuation of the conservation program and the SRR. September 13 Opinion and Order 13, 16, and 17. The Commission has already found and should confirm that its September 13 Opinion and Order (and January Stipulation) benefits ratepayers and is in the public interest, and does not violate any regulatory principle or practice. *Id.* at 16.

IV. CONCLUSION

OCC expends considerable intensity and hyperbole in an effort to demonstrate that, somehow, VEDO's customers are unfairly burdened by the prospect of actually compensating VEDO for the costs it incurs in providing service to them and, not benefited by $2 million of shareholder-funded assistance programs for which 60% of them are eligible. It is a fundamental regulatory principle that regulation must provide a reasonable opportunity for utilities to earn a fair, just, and reasonable return. OCC agreed in April 2006 that the SRR does only that. The fact that the customer-funded conservation programs supported by OCC at that time were rejected and substituted by VEDO-funded programs by the Commission does not change the nature of the SRR. It does, however, change the economics of the result. It benefits customers in the amount of $4.7 million over the results of the April 10 Stipulation and reduces VEDO's opportunity to collect the revenue requirement approved by the Commission in its last

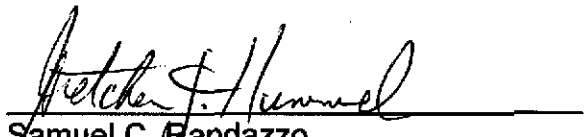
rate case by $2 million. This hardly results in unreasonable regulatory freedom as OCC asserts.

The January Stipulation agreement, demonstrating agreement by the signatory parties to the Commission's September 13 Opinion and Order, was and is motivated by a shared interest in moving forward with conservations programs for which 60% of VEDO's residential customers are eligible, removing rate design barriers to conservation, and providing VEDO with the accounting authority required to allow the alternative regulation plan's components to work in harmony. OCC's repeated challenges to the January Stipulation, regardless of the subject matter, are actually an application for rehearing from the September 13 Opinion and Order. OCC has already exercised its right, pursuant to Section 4903.10, Revised Code, to seek rehearing of that order, which was denied in the Commission's November 8 Rehearing Entry. In its April 23 Initial Brief, OCC has devoted most of its efforts to addressing matters outside of the scope of this proceeding as defined by the Examiners in their Entry dated February 12, 2007 and at the discovery conference on February 28. February 28 Discovery Conference, Tr. at 72.

As VEDO has previously demonstrated, no finding has been (or can be) made that the January Stipulation raises any issues not already contemplated by or which could have been contemplated by VEDO's application. The issues raised by VEDO's application were considered in the Commission's review of the record presented in the April 24 hearing and resulted in the alternative regulation plan sought to be implemented by the January Stipulation. Since there are no new issues raised by the January Stipulation, and the Commission has already ruled that the January Stipulation

(September 13 Opinion and Order) meets its three-part test, the Commission is respectfully requested to approve the January Stipulation as soon as practicable.

Respectfully submitted,



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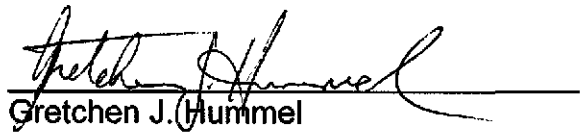
CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Vectren Energy Delivery of Ohio, Inc.'s Reply Brief* has been hand-delivered, sent electronically or served *via* ordinary U.S. Mail, postage prepaid, this 3rd day of May, 2007 to the following parties of record.



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